FOR ARGUMENT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1868

NATIONAL GEOGRAPHIC SOCIETY,
Appellant,

v.

BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA,
Appellee.

On Appeal from the Supreme Court of California

REPLY BRIEF OF APPELLANT

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A review of the Appellee's brief leads us to address *ad seriatim* the specific points raised in those instances which appear pertinent. Those items not addressed are considered of no justiciable value in assisting the Court in reaching its decision in this case.

I. THE NATIONAL GEOGRAPHIC SOCIETY IS NOT A "RETAILER ENGAGED IN BUSINESS" IN CALIFORNIA

California Revenue and Taxation Code Section 6203 (Brief of Appellee, Appendix 1-2) states that only a "retailer engaged in business in California is required to collect a use tax on retail sales to California purchasers. Section 6203 further states that the phrase "retailer engaged in business" in California includes "[a]ny retailer maintaining . . . an office, place of distribution, sales or sample room or place, warehouse, or storage place or other place of business."

The Society is engaged in California in the solicitation of commercial advertising for its national Magazine, an activity which the Board admits (Brief of Appellee at 30, hereinafter "Br.App. ....") is not subject to California sales or use taxation. If Section 6203 required "every *person* engaged in business in [California]" to have a responsibility for use tax collection, then Section 6203 would apply to the Society, but the Section simply does not read that way. To interpret the phrase "retailer engaged in business" to include a retailer *not* engaged in retail business in California is to ignore the plain meaning of the statute. In *West Publishing Company* v. *Superior Court of City and County of San Francisco,* 128 P.2d 777, 20 Cal. 2d 720 (1942), *cert. denied,* 317 U.S. 700 (1943), the California Supreme Court held that a foreign law book publishing company maintained a place of business in the state for purposes of Section 6203 where it maintained large libraries in law offices in California, in return for the use of which its in-state salesmen were allotted office space, which it advertised as its local addresses; where in response to continuous solicitation of orders there was a regular flow of books

into California; and where its salesmen received initial installment payments, exercised a limited discretion in respect of collections on delinquent accounts, and frequently consummated sales to customers to whom unordered books were sent. Such activity was clearly "retail" in nature and thus within the meaning of Section 6203, as distinguished from the admittedly non-retail activity of the Society in California. Until Section 6203 is amended so as to include a *retailer engaged in non-retail business in California,* the non-retail in-state activity of the Society will fail to bring it within the ambit of such Section.

II. THE NON-RETAIL, IN-STATE, ACTIVITIES OF THE SOCIETY BEAR NO RELATIONSHIP TO ITS OUT-OF-STATE MAIL ORDER SALES AND CANNOT BE USED TO SUPPORT A USE TAX COLLECTION LIABILITY

The due process test for determining the permissible limits of state taxation has been set forth by this Court in *Wisconsin* v. *J. C. Penney Co.,* 311 U.S. 435, 444 (1940):

> A state is free to pursue its own fiscal policies, unembarrassed by the Constitution, if by the practical operation of a tax the state has exerted its power in *relation* to opportunities which it has given, to protection it has afforded, to benefits which it has conferred by the fact of being an orderly, civilized society. (Emphasis added.)

As was stated by the California Court of Appeal in *Montgomery Ward & Co., Inc.* v. *State Board of Equalization,* 272 C.A. 2d 723, 78 Cal. Rptr. 373 (Ct. App. 1st Dist. 1969), *petition for hearing denied* (Sup. Ct. Calif., August 6, 1969), *cert. den.* 396 U.S. 1040 (1970),

> . . . the protection afforded and the benefits conferred must have some *relationship* to the transac-

> tion which the State seeks to burden. 78 Cal. Rptr. at p. 382. (Emphasis added.)

The relevant inquiry was aptly raised and then answered by the California Court of Appeal in the instant case (Jurisdictional Statement page 25a):

> What did the State of California give, in relation to the out-of-state sales, that the state can ask a return by way of requiring the Society to collect the use taxes? The answer is that the state provided no protections or benefits which were related to the . . . out-of-state sales. . . . all parts of the transactions were conducted through the federal mail, with the state playing no part and providing no benefits or protections.

As admitted by the Board (Br. App. 10), the only benefits afforded the Society by the state of California relate to the Society's advertising solicitation activities. Clearly, if California chose to impose a tax on those activities, the due process test set forth in *Wisconsin* v. *J. C. Penney Co., supra*, would be satisfied. The state of California, however, has chosen not to impose a tax on such activities, and its election to not so tax those activities does not entitle the state constitutionally, to tax, as a more convenient alternative, other totally unrelated, out-of-state activities of the Society for which the state of California has clearly given nothing for which it can ask return. The in-state activities of the Society vis-a-vis the Society's out-of-state mail order sales is discussed more fully, *infra*, Part VII.

III. NATIONAL BELLAS HESS REQUIRES IN-STATE RETAIL ACTIVITY BEFORE USE TAX COLLECTION LIABILITY MAY BE CONSTITUTIONALLY IMPOSED

The unmistakably clear line drawn by this Court in *National Bellas Hess* v. *Department of Revenue*, 386 U.S. 753 (1967), was that a state may not constitution-

ally impose a use tax collection liability on a foreign retailer which limits all of its retail, or customer, contacts to the United States mail or common carrier. The Court noted the "sharp distinction" between such foreign sellers who confine their activities to interstate instrumentalities, and those sellers which have "retail outlets, solicitors or property within a state." 386 U.S. at p. 758. The plain meaning of this quoted language is that the word "retail" modifies (1) outlets, (2) solicitors, and (3) property. The attempt by the Board (Br.App.11-13) to read this language as meaning "retail outlets, retail or *non-retail* solicitors, and retail or *non-retail* property" exceeds all limits of interpretative reasoning.

Additionally, reading *National Bellas Hess* as prohibiting "*any* physical contacts" (Br.App.11) between the state and the foreign seller would not only be contrary to the language quoted above, but would also be directly contrary to *Miller Bros. Co.* v. *Maryland*, 347 U.S. 340 (1954), a case on which the Court in *Hess* placed considerable emphasis.

We repeat the key distinction drawn by this Court in *Hess*:

> . . . the Court has never held that a State may impose the duty of use tax collection and payment upon a seller whose *only connection with customers in the State* is by comon carrier or the United States mail. 386 U.S. at p. 758.

Contrary to the assertion of the Board (Br.App. 12) that this construction would render the *Hess* opinion "internally inconsistent" and would overrule *Nelson* v. *Sears, Roebuck & Co.*, 312 U.S. 359 (1941), the Court in *Hess* clearly contrasted a foreign seller which limited

its connection with customers to common carrier or the United States mail, with the situation existing in *Sears* where the seller had local *retail* outlets. See 386 U.S. at p. 758.

The misunderstanding of the Board as to what constitutes due process for taxing purposes is manifested at page 13 of the Brief for Appellee. The Board argues that, on the authority of *National Bellas Hess,* a state is providing a *benefit* to a foreign retailer within the meaning of the due process clause by reason of the protection afforded that state's resident customers. This suggestion borders on the absurd. What benefit does a foreign retailer derive from a state when it never enters the state on retail business? The answer is "none." A benefit is derived when a foreign retailer enters a state on retail business, travels through a state on retail business, maintains a place of retail business in a state, transacts retail business within a state and the like. None of the sales transactions involved in *Hess* were so conducted in-state, nor were the transactions in the instant case. This requirement of an *in-state* derivation of benefit for due process purposes was made eminently clear in *Nelson* v. *Sears, Roebuck & Co.,* 312 U.S. 359 (1941). The benefit conferred in that case was the extension to Sears by the state of Iowa of the privilege of being qualified to do business in Iowa, a matter that will be discussed *infra.*

On page 15 of its Brief, the Board refers to the bills that have been pending in the 89th through 94th Congresses, which would provide for a uniform system of interstate taxation. This legislation was drafted in response to the Report of the Special Subcommittee on State Taxation of Interstate Commerce, H.R. 565, issued June 30, 1965. Contrary to the suggestion of the Board, the Report makes clear that the Congress believes there must be *sales-related* activity by a foreign seller *within* a state before a use tax collection liability may be properly imposed.

In pertinent part, the Report states:

> It has been proposed that responsibility for collection of sales and use taxes be limited to firms with activity in a State in the nature of a "permanent establishment." This would include such installations as a plant, retail outlet, warehouse, or other originating point, but under some definitions, would exclude an office dealing exclusively with interstate sales. A solution of this nature would perhaps be the most conservative approach, in that it is very close to the situation as it exists in fact if not in law. While there are scattered instances of firms collecting tax for States where they have no such "permanent establishments," the proposed test would make no change in the present collection practices of most interstate sellers.
>
> This solution recognizes the unfairness of forcing an out-of-State seller not only to collect taxes imposed by another State upon its own people, but to submit to a whole series of local procedures and rules likely to be ill-designed for his business and at variance with the practice in other States where he is collecting tax. The "permanent establishment" rule has the effect of requiring collection only in cases where sales are being made in circumstances very similar to those of local companies and where an apparent tax advantage would be most resented. These are cases in which the out-of-State seller has localized his operation to a point where the full impact of local regulation may appropriately be applied and in which businessmen themselves generally seem prepared to recognize a tax-collection responsibility. A line drawn at this point would raise relatively few

> problems of interpretation or uncertainty. By accepting the prevailing practice, this solution would also alleviate the inequities suffered by those few companies collecting tax in more tenuous circumstances and would remove from others the cloud of contingent liability which now hangs over them. H.R. 565, pp. 883-884.

Under the Board's approach, a foreign mail-order seller could be held liable for a use tax collection liability on its mail-order sales into a state in which it owned a parking lot. The ownership of this parking lot would in no way be in furtherance of the mail-order sales, nor provide any sort of local customer identification which might attract or enhance local sales, yet, it would, in the opinion of the Board, be a sufficient in-state presence to support a use tax collection liability. Such a result would be clearly contrary to the due process requirements set forth in *Wisconsin* v. *J. C. Penney Co., supra.*

IV. NELSON v. SEARS, ROEBUCK & CO. REQUIRES (1) IN-STATE RETAIL ACTIVITY AND (2) IN-STATE QUALIFICATION TO DO BUSINESS IN ORDER TO REACH FOREIGN MAIL-ORDER SALES

In *Nelson* v. *Sears, Roebuck & Co.,* 312 U.S. 359 (1941), Sears, Roebuck & Co. had brought a suit to enjoin the state of Iowa from revoking Sears' authorization to do business as a foreign corporation in Iowa because of Sears' refusal to collect a use tax on its mail-order sales to Iowa residents. In its review of the case, this Court noted that as far as the *purchaser* of the mail-order sales was concerned, the validity of a use tax "has been withdrawn from the arena of debate." 312 U.S. at p. 363. (Citations omitted.) The "nub" of the controversy centered on the use of Sears,

Roebuck & Co., the *seller,* as the collection agent for such use taxes for Iowa. In response to Sears' argument that the mail-order sales in question were not related to Sears' in-state activity, the Court stated that while that point might be relevant if Sears were not qualified to do business in Iowa, since Iowa had extended to Sears that privilege, Iowa could exact a use tax collection liability on Sears' mail-order sales "as a price of enjoying the full benefits flowing from its Iowa business." 312 U.S. at p. 364. Moreover, the Court stated,

> Whatever may be the inspiration for these mail orders, however they may be filled, Iowa may rightly assume that they are not unrelated to [Sears] course of business in Iowa. 312 U.S. at p. 364.

Additionally, with regard to Sears' argument that the imposition of a use tax collection liability would place it at a competitive disadvantage with other mail-order businesses, the Court responded,

> But those other concerns are not doing business in the state as foreign corporations. Hence, unlike [Sears], they are not receiving benefits from Iowa for which it has the power to exact a price. 312 U.S. at p. 365.

In short, the basis upon which Sears' use tax collection liability for its mail-order sales was upheld was its qualification to do business as a foreign corporation within the state of Iowa, a benefit clearly conferred upon Sears by Iowa, as opposed to the instant case, and a benefit for which Iowa could exact as a price use tax collection liability on Sears' mail-order sales. Thus, two critical elements present in *Sears* are lacking in the instant case: (1) Sears was attempting to depart-

mentalize its retail business between taxable local sales and non-taxable mail-order sales and (2) Sears was qualified to do business as a foreign corporation in-state. In no way can *Sears, Roebuck & Co.* be properly cited as support for the argument of the Board that California may impose a use tax collection liability on the Society for its mail-order sales to California purchasers.

V. THE "DISSOCIATION" TEST IS APPLICABLE IN ALL CASES WHERE A STATE SEEKS TO COLLECT A SALES-RELATED TAX FROM A SELLER

In analyzing a use tax case such as present herein, two questions must be asked. The first is whether a use tax may be imposed on a *purchaser* by reason of his in-state usage of an article purchased out of state, and second, whether the *seller* responsible for the out-of-state sale can be held liable for the collection of that use tax from the purchaser. As was seen in *Nelson* v. *Sears, Roebuck & Co., supra,* the first question is readily answerable, especially in the case of a resident mail-order purchaser. The more difficult inquiry is whether the seller has enough contacts with a taxing state to require him to collect and account for the applicable use tax. In *Scripto* v. *Carson,* 362 U.S. 207, 211 (1960), "continuous local solicitation" by in-state "salesmen" justified the imposition of a use tax collection liability; in *Nelson* v. *Sears, Roebuck & Co., supra,* twelve retail stores in-state *and* a qualification to do business in-state justified the imposition of a use tax collection liability. Twenty-four years after the *Sears, Roebuck* case, however, this Court held in *American Oil Company* v. *Neill,* 380 U.S. 451, 458 (1965), that, with respect to a seller's liability for sales-related tax, a company can "exempt itself by a *clear* showing that there are no in-state activities connected *with* out-of-state sales." (Emphasis added.)

The point that was made in our opening brief (pp. 29-33), to which the Board has simply closed its eyes (Br. App. 17-20) is that the principle of "dissociation" is applicable in all sales-related cases involving the liability of the *seller* for such taxes. While this principle of "dissociation" may be of no importance in determining the applicability of a use tax, it undeniably is of significant importance in weighing the validity of the imposition of a use tax collection liability on a *seller.* This Court clearly recognized the applicability of the "dissociation" test in all sales-related tax cases involving the liability of the *seller* in *American Oil Company* v. *Neill,* 380 U.S. 451 (1965), an excise tax case, by its citation of *Miller Bros. Co.* v. *Maryland, supra,* a use tax case, as controlling authority for the requirement that there must be "some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax." 380 U.S. at p. 457.

VI. THE "SLIGHTEST PRESENCE" TEST FORMULATED BY THE CALIFORNIA SUPREME COURT IS IN CONFLICT WITH MILLER BROS. CO. v. MARYLAND

In *Miller Bros. Co.* v. *Maryland,* 347 U.S. 340 (1954), this Court specifically rejected the imposition of a use tax collection liability by Maryland on a Delaware seller who was found to have some "presence" within Maryland. The case arose because Maryland seized one of Miller Bros.' trucks which was making deliveries to Maryland residents. The sales in question had been made to Maryland residents who had gone to Miller Bros.' Delaware store. During the taxable period July 1, 1947, through December 31, 1951, $2,500 of the purchases were carried back to Maryland by the purchasers, $1,500 in purchases were delivered to the purchasers' Maryland residences by common carrier, and

$8,000 in purchases were delivered to the purchasers' Maryland residences by a Miller Bros.' delivery truck. 347 U.S. at pp. 350-351. The Court phrased the question:

> . . . whether [Miller Bros.], by its acts or course of dealing, has subjected itself to the taxing power of Maryland or whether it has afforded that State a jurisdiction or power to create this collector's liability. 347 U.S. at p. 344.

With the exception of the delivery in-state by its own trucks, all contacts by Miller Bros. with the Maryland customers were either by interstate facilities or by direct customer contacts out of the state of Maryland. The Court contrasted the facts found in *General Trading Co.* v. *State Tax Commissioner,* 322 U.S. 335 (1944), as being the case of "an out-of-state merchant *entering* the taxing state through traveling sales agents to conduct *continuous local solicitation* followed by delivery of ordered goods to the customers . . . ." In such a situation, it was stated, "[t]he Court could properly approve the State's decision to regard such a rivalry with its local merchants as *equivalent to being a local merchant.* 347 U.S. at p. 346. (Emphasis added.)

The Court noted, however:

> . . . there is a wide gulf between this type of *active and aggressive operation within a taxing state* and the occasional delivery of goods sold at an out-of-state store with no solicitation other than the incidental effects of general advertising. *Here there was no invasion or exploitation of the consumer market in Maryland.* 347 U.S. at p. 347. (Emphasis added.)

The Court further noted that although the Maryland residents undoubtedly incurred a liability for the use

tax when they used, stored or consumed the goods in Maryland, "the burden of collecting or paying their tax cannot be shifted to a foreign merchant in the absence of some jurisdictional basis not present here." 347 U.S. at p. 347.

Contrary to the assertion of the Board (Br. App. 20-23), there was no "defect" in the relationship between Miller Bros. and the Maryland residents, in the form of an "uncertainty" as to which purchases were to be used in Maryland, which prevented the transactions from being taxed. The facts in the case clearly show that of the $12,000 of furniture sold to Maryland residents during the taxable period July 1, 1947 through December 31, 1951, $8,000 was delivered by Miller Bros.' own trucks, and $1,500 was delivered by common carrier. 347 U.S. at pp. 350-351.

VII. NEITHER THE DE MINIMUS IN-STATE OVER-THE-COUNTER SALES DURING THE FIRST QUARTER IN ISSUE NOR THE IN-STATE ADVERTISING SOLICITATION ACTIVITIES HAVE ANY RELATION TO THE SOCIETY'S OUT-OF-STATE MAIL-ORDER SALES

As was stated in our opening Brief (pp. 8-9), during the nine month period ending May 6, 1964, $679.20 in maps, atlases, globes and books were sold over-the-counter from the Society's advertising office in San Francisco, while $2,161.85 of the same articles were sold from the Society's advertising office in Beverly Hills. The combined sales represent .63% of the Society's mail-order sales to California purchasers during the same period.[1] By way of contrast, in-state re-

[1] Based on over-the-counter sales totalling $2,841.05 during the period August 1, 1963 to May 6, 1964 and mail order sales to California totalling $452,470.00 during the same period. *See,* Stipulation of Facts, paragraphs 13 and 14, Appendix at 43a-44a.

tail sales from Sears' 12 Iowa retail department stores for the year 1936 amounted to $5,080,000, while mail order sales by Sears' to Iowa residents amounted to $5,900,000. *Nelson* v. *Sears, Roebuck & Co., supra,* 312 U.S. at p. 362, fn. 3.[2]

The Society's local sales were regarded as *de minimus* by the California Court of Appeal and were disregarded by the Supreme Court of California. The suggestion by the Board (Br. App. 24) that the Society's over-the-counter sales bear the same relationship—assumed or otherwise—to its mail-order sales as was the case in *Nelson* v. *Sears, Roebuck & Co., supra,* is not worthy of further response.

Additionally, the Society's over-the-counter sales were terminated as of May 6, 1964, so that for the second taxable period in issue, July 1, 1964 through September 30, 1964, there are no in-state sales, *de minimus* or otherwise.

As for the Board's dispute as to whether the record adequately supports our assertion that the Society was not registered to do business in California, it can be safely assumed that if the Society were so registered, the Board would have produced evidence thereof. Moreover, the question of whether the Society *is* so registered would only be relevant, if, as was the case in *Nelson* v. *Sears, Roebuck & Co., supra,* the state of

[2] There is nothing in the record or this Court's decision in *Sears, Roebuck & Co.* to support the Board's assertion (Br.App. 24) that the Sears' mail-order sales were confined to the "outlying rural areas" of Iowa as compared to Sears' "urban" retail outlets. To the contrary, the Transcript of Record in *Sears, Roebuck & Co.* reflects that Sears did not maintain any records which would allow for such a distinction—rural vs. urban mail-order sales—to be made. *See,* Transcript of Record, October Term, 1940, No. 255, pp. 11-12; 60-61.

California was attempting to revoke such registration because of the Society's failure to remit to the state the use taxes in question. The Board's attempt (Br. App. 26) to minimize the controlling significance of Sears' qualification to do business in light of this Court's decisions in *Felt & Tarrant Mfg. Co.* v. *Gallagher,* 306 U.S. 62 (1939), and *General Trading Co.* v. *Tax Commission,* 322 U.S. 335 (1944), is similarly unpersuasive. Both *Felt & Tarrant* and *General Trading* involved local sales agents soliciting the very sales orders which were being subjected to use tax thus providing the requisite nexus. In *Sears, Roebuck,* however, there was no *direct* local activity relating to the mail-order sales,[3] and the qualification of Sears to do business in Iowa was the critical benefit conferred by Iowa on Sears—a benefit lacking in *Felt & Tarrant, General Trading,* and the instant case—which provided the constitutional basis for upholding Sears' use tax collection liability.

VIII. THE NATIONAL GEOGRAPHIC SOCIETY DID NOT EXPLOIT THE MARKET IN A FASHION TO PROVIDE NEXUS FOR PURPOSES OF USE TAX COLLECTION LIABILITY

In *Miller Bros Co.* v. *Maryland, supra,* the Delaware retailer advertised in newspapers and on radio both of which were received to some extent in Maryland. This advertising was in addition to its sales circulars which

[3] The Iowa retail outlets of Sears had participated in the processing of certain mail order sales of Iowa customers. These particular sales were conceded by Sears to be subject to the Iowa use tax and, accordingly, were not a part of the mail order sales in issue. *See* Transcript of Record, fn. 2 *supra,* pp. 4-5, 7, 27-28. The involvement of the Sears' Iowa stores in such mail order sales underscores Sears' attempt to "departmentalize" its in-state, sales-related activities into taxable and non-taxable transactions. See *Nelson* v. *Sears, Roebuck & Co., supra,* 312 U.S. at p. 364.

were received by Maryland residents through the interstate mails.

In *National Bellas Hess* v. *Department of Revenue supra,* the company circulated its catalogue broadly throughout Illinois and also circulated advertising flyers on a frequent basis throughout the state by interstate mail. In neither of those cases were those facts sufficient to bring those companies under the taxing authorities' jurisdiction. Nor should it have been, for those cases were rightly decided. In the instant case the National Geographic Society's only approach in sales advertising was through the interstate mails by means of ads in its exempted publication, the "National Geographic" and promotion circulars on a limited basis in the same fashion. The same result should obtain here.

The assertion by the Appellee (Br.App.23) that the Society "specifically directed" an advertising campaign at California subscribers is false. All contacts with California purchasers were confined exclusively to facilities of interstate commerce which this Court has upheld as being permissable and beyond the taxing reach of the states.

CONCLUSION

It should be noted that the State of New York saw fit to file an amicus brief. It can best be disposed of by pointing out that it cites no cases not already cited by the principals insofar as the issues of this case are concerned. Its perorations concerning state's rights and its plea that the state is in need of funds should fall on deaf ears. Article 1, Section 8, clause 3 of the United States Constitution either stands for something or nothing; a state's desire to secure funds through its asserted taxing powers should have no influence on a

matter where a constitutional bar exists, as it does on the facts of this case. Revenue needs alone do not justify a curtailment of the degree of due process which is mandated by the Constitution before an out-of-state retailer can be held liable for taxes which the states choose not to collect from their own citizen-users.

On page three of its brief, the State reiterates the erroneous holding of the California Supreme Court and cites as the principal authority *Standard Pressed Steel Co.* v. *Washington Revenue Department* 419 U.S. 560 (1975). We have referred to this case in both our statement of jurisdiction and our brief in chief. We quote herewith the factual statement from the Court's opinion beginning at page 561 which we believe to be pertinent:

> Its principal customer in the State of Washington is the Boeing Company, in Seattle. In the years relevant here it had one employee, one Martinson, in Washington who was paid a salary and who operated out of his home near Seattle. He was an engineer whose primary duty was to consult with Boeing regarding its anticipated needs and requirements for aerospace fasteners and to follow up any difficulties in the use of appellant's product after delivery. Martinson was assisted by a group of engineers of appellant who visited Boeing about three days every six weeks, their meetings being arranged by Martinson.

From the foregoing, it is abundantly clear that Mr. Martinson's involvement was directly related to and involved in the retail sales made to the Boeing Company irrespective of the fact that items sold to Boeing were shipped by mail from Standard's out-of-state plants.

It would be difficult to foresee under the doctrine of *Scripto, supra,* how there could be more direct in-

volvement than that set forth in the above stated quote. We believe the case was rightly decided and that it has no bearing on the facts of this case except to further distinguish the fact that the National Geographic Society had no local presence involved in the retail sales here in question.

Accordingly, for all the reasons stated in our statement of jurisdiction, our brief in chief and above, we urge that this Honorable Court reverse the decision of the Supreme Court of California and set forth in the decision of this Court a set of rules on this subject which will clearly delineate the farthest extent to which a state may reach in seeking tax revenue in this field. We believe that the Court of Appeal, First Appellate District of California reached the right conclusion. We urge this Court to support that conclusion.

Respectfully submitted,

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